

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MCKESSON AUTOMATION, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-028 (SLR/LPS)
)	
SWISSLOG ITALIA S.P.A. and)	PUBLIC VERSION
TRANSLOGIC CORPORATION,)	
)	
Defendants.)	

**DECLARATION OF BRYAN N. DEMATTEO
IN OPPOSITION TO MCKESSON'S MOTION
FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
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OF COUNSEL:

*Attorneys for Defendants Swisslog Italia,
S.p.A. and Translogic Corporation*

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Confidential Version Filed: May 9, 2008
Public Version Filed: May 20, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MCKESSON AUTOMATION, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-028 (SLR/LPS)
)	
SWISSLOG ITALIA S.P.A. and)	PUBLIC VERSION
TRANSLOGIC CORPORATION,)	
)	
Defendants.)	

**DECLARATION OF BRYAN N. DEMATTEO
IN OPPOSITION TO MCKESSON'S MOTION
FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

I, Bryan N. DeMatteo, declare as follows:

1. I am associated with the law firm Dickstein Shapiro LLP, counsel of record for Defendants Swisslog Italia S.p.A and Translogic Corporation (collectively "Defendants"). I make this declaration in support of Defendants' Opposition to McKesson Automation, Inc.'s Motion for Leave to File a Second Amended Complaint.

2. Attached as Exhibit A is a true and correct copy of a letter dated October 22, 2007, from Defendants to opposing counsel.

3. Attached as Exhibit B is a true and correct copy of an email dated November 26, 2007, from Defendants to opposing counsel.

4. Attached as Exhibit C is a true and correct copy of a letter dated October 25, 2007, from opposing counsel to Defendants.

5. Attached as Exhibit D is a true and correct copy of a letter dated November 27, 2007, from Defendants to the Honorable Mary Pat Thyng.

6. Attached as Exhibit E is a true and correct copy of a letter dated November 28, 2007, from counsel for McKesson Automation, Inc. to the Honorable Mary Pat Thyng.

7. Attached as Exhibit F is a true and correct copy of excerpts of the transcript of the telephone conference of November 29, 2007, held before the Honorable Mary Pat Thyng.

8. Attached as Exhibit G is a true and correct copy of a draft version of the Stipulated Seventh Amended Scheduling Order.

9. Attached as Exhibit H is a true and correct copy of an email dated April 17, 2008 from opposing counsel to Defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief. This declaration is executed this 9th day of May, 2008.

/s/ Bryan N. DeMatteo

Bryan N. DeMatteo

2321816

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on May 20, 2008 I electronically filed the foregoing with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Dale R. Dubé, Esquire
Blank Rome LLP

Additionally, I hereby certify that true and correct copies of the foregoing were caused to be served on May 20, 2008 upon the following individuals in the manner indicated

BY E-MAIL

Dale R. Dubé, Esquire
Blank Rome LLP
Chase Manhattan Centre
1201 Market Street, Suite 800
Wilmington, DE 19801

Blair M. Jacobs, Esquire
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004

/s/ Julia Heaney

Julia Heaney (#3052)
jheaney@mnat.com

EXHIBIT A

FULLY REDACTED

EXHIBIT B

FULLY REDACTED

EXHIBIT C

FULLY REDACTED

EXHIBIT D

FULLY REDACTED

EXHIBIT E

FULLY REDACTED

EXHIBIT F

Thursday, November 29, 2007

SHEET 1

1

1 IN THE UNITED STATES DISTRICT COURT
2 IN AND FOR THE DISTRICT OF DELAWARE

3
4 MCKESSON AUTOMATION, INC., : CIVIL ACTION
a Pennsylvania Corporation, :
5 Plaintiff, :

6 v :
7 SWISSLOG HOLDING AG, :
SWISSLOG MANAGEMENT AG, :
8 TRANSLOGIC CORPORATION, and :
SWISSLOG NORTH AMERICA, :
9 : NO. 06-28 (***)
Defendants. :

10
11 Wilmington, Delaware
12 Thursday, November 29, 2007 at 9:00 a.m.
TELEPHONE CONFERENCE

13
14 BEFORE: HONORABLE MARY PAT THYNGE, U.S. MAGISTRATE JUDGE

15
16 APPEARANCES:

17 BLANK ROME, LLP
18 BY: DALE R. DUBE, ESQ.

19 and

20 SUTHERLAND ASBILL & BRENNAN, LLP
21 BY: BLAIR M. JACOBS, ESQ., and
CHRISTOPHER L. MAY, ESQ.
(Washington, District of Columbia)

22 Counsel for Plaintiff

23

24

25

Brian P. Gaffigan
Registered Merit Reporter

Thursday, November 29, 2007

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1 THE COURT: That is the privilege documents that
2 you raise in your letter of November 27th?

3 MR. JACOBS: They were raised, Your Honor, in
4 plaintiff's letter of November 13th.

5 THE COURT: Okay. But I'm trying to find where
6 it's related. I know it was raised in your letter of
7 November 13th. I'm just trying to find where it was raised
8 in the response by Swisslog.

9 MR. JACOBS: I think it's the next-to-last
10 paragraph, the privileged document, on the second page.

11 THE COURT: That's what I said, the second page
12 regarding that.

13 MR. JACOBS: Yes.

14 THE COURT: Question: When did defendants
15 advise plaintiff of this inadvertent production?

16 MR. JACOBS: Your Honor, it was the morning of
17 the deposition of the individual that had been involved in
18 preparing it, Mr. Gambarelli. And it was shortly after they
19 were produced -- I will acknowledge that, shortly after they
20 were produced. The problem, Your Honor, is that they have
21 waived everything relating to infringement advice, relating
22 to opinions. As of right now, they have waived that, and
23 they have an opinion that was provided on January 26th and
24 another opinion that was provided on March 16, both of 2006,
25 and then they have these documents which have the same

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1 information that is contained in the opinions on February 14
2 of 2006 right between those two opinions. So to say these
3 are pure trial strategy documents, it just defies logic,
4 Your Honor.

5 THE COURT: Well, what I said to you was you are
6 going to be allowed to take the deposition of the Italian
7 attorneys who were involved in rendering opinions in 2001,
8 2002 and the one that was rendered shortly after the lawsuit
9 was filed from the Italians. I haven't said what happens
10 with the documents of opinions of counsel that were the
11 American counsel's opinions of counsel. I'm not certain
12 that they get clawed back automatically. I think they're
13 just kind in abeyance.

14 MR. JACOBS: Okay.

15 THE COURT: The issue, though, that Fred has
16 addressed are what he has addressed as privileged documents
17 that are not part of those opinions of counsel. Am I
18 corrects in understanding what the issue is?

19 MR. FABRICANT: That is correct. These are
20 communications, correspondence between the two companies,
21 related companies on the facts that the attorneys, the trial
22 attorneys asked them to gather to put in an answer.

23 THE COURT: No, wait a minute. Who are the two
24 related companies, Fred? Because now I got a little bit
25 confused.

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1 MR. FABRICANT: Translogic is the defendant who
2 is the American company.

3 THE COURT: Okay.

4 MR. FABRICANT: And Swisslog Italia is the
5 plaintiff in Italy. So the distributor in Colorado, at
6 the trial lawyer's specific request, asked the Italian
7 manufacturers to provide certain information about the
8 machines that they manufacture so that the trial lawyers
9 could prepare answers and counterclaims. It had nothing to
10 do with the preparation of opinions of counsel by patent
11 lawyers. It had to do with trial preparation for trial
12 defense, answers, counterclaims, trial strategy.

13 THE COURT: Were any of those like documents
14 provided to the attorneys who were going to be rendering
15 opinion of counsel, that is, the American attorneys?

16 MR. FABRICANT: Absolutely not. They never even
17 saw these documents.

18 THE COURT: Were any of these documents
19 provided to the Italian attorneys who rendered opinion of
20 counsel?

21 MR. FABRICANT: I'm sorry?

22 THE COURT: I'm sorry. Were any of these
23 documents that you referenced as being privileged provided
24 to Italian counsel for their use?

25 MR. FABRICANT: No, Your Honor. These were all

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1 generated well after the Italian lawyers were completely out
2 of the picture.

3 MR. JACOBS: Your Honor, these documents were
4 prepared on February 14th of 2006. There is an opinion
5 rendered on March 16th of 2006 which contains very much the
6 same information in the opinion. That is one month later.
7 That opinion bears the initials of Mr. Fabricant on the
8 bottom under the Dickstein Shapiro signature. I asked the
9 CEO of Translogic do you think Mr. Fabricant was responsible
10 and assisted in preparing this opinion? He said yes, that's
11 what I'm thinking. I'm thinking that is part of the
12 continuing series of opinions that had been provided to us
13 for the two prior months before that.

14 They're relying upon that opinion in this case.
15 The scope of waiver obviously is fairly broad when you rely
16 upon something, so they can't rely upon these opinions and
17 the information in the letters that was in the opinions and
18 then claw back information such as these letters that might
19 be able to contradict or refute what is in the opinions.

20 THE COURT: Okay. What I have said today and my
21 ruling is that the American lawyers will not be deposed; the
22 documents, the opinions that were prepared kind of just are
23 held in abeyance because the argument right now that I have
24 got from both sides basically is, if this goes forward and
25 there is a potential for continuing willfulness, judge,

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1 probably, probably Swisslog, the defendants in this case
2 are going to be relying upon American counsel's opinion of
3 counsel but that choice hasn't been made yet. To the extent
4 that those documents relate to or are part of the opinion of
5 counsel, they kind of get incorporated into that. To the
6 extent that they aren't, they could very well be privileged.
7 I don't think I need to make a ruling on it. I think they
8 just get held in this pocket along with the rest. Do you
9 understand what I'm saying?

10 MR. JACOBS: That's fine, Your Honor.

11 MR. FABRICANT: That's fine, Your Honor.

12 THE COURT: So they're marked out and we kind of
13 put a box around them, a fence around them, hold them in
14 abeyance, figure out what is going to happen with this
15 motion to dismiss, which, by the way, counsel, there is a
16 good chance myself or Judge Stark will be deciding,
17 potentially. I don't know when, but potentially. Motions
18 to dismiss, it seems like we're going to probably be
19 deciding, but not motions for summary judgment.

20 MR. FABRICANT: That would be fine, Your Honor.

21 MR. JACOBS: That's fine, Your Honor.

22 THE COURT: The latest feeling by the judges on
23 this court is that potentially could happen because it's not
24 generally getting rid of the entire case, as well as other
25 determinations that may not be fully case dispositive.

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1 So that is my ruling and that's the best way I
2 think I can cut it apart right now for the purposes of a
3 scheduling order that was unable to address what happened
4 with Seagate because it pre-dated Seagate.

5 MR. JACOBS: Your Honor, this is Mr. Jacobs.
6 Just to make sure that I have a clear understanding. We're
7 saying basically, I think I understand, let's go ahead and
8 get the Italian deposition out of the way. Let's get the
9 motion to dismiss on file. And then let's see if it
10 survives the challenge.

11 THE COURT: Yes.

12 MR. JACOBS: Now, what period of time would be a
13 fair period of time? Assuming we survive a motion to
14 dismiss and there is some basis under post-Seagate law to
15 move forward with the willfulness case, when can I get a
16 lockdown commitment from the defendants that they're going
17 to rely upon these Dickstein Shapiro opinions or not rely
18 upon the Dickstein Shapiro opinions? I would like to have
19 that within 15-30 days, some reasonable period of time after
20 a ruling came out on the motion to dismiss.

21 THE COURT: Oh, I see what you are saying. I
22 see what your question is.

23 Okay. I think that is directed to you, Fred,
24 more than it is to me.

25 MR. FABRICANT: Well, obviously after the motion

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1 to dismiss is ruled upon, as far as I understand I think
2 what the concept of Your Honor's ruling is, we'll have to
3 make an election at that time whether we want to use or not
4 use the Dickstein Shapiro opinions. And if we do, then
5 they'll be permitted to take the lawyer's deposition.

6 THE COURT: That's right. That would be with
7 the whole situation. I think you can probably make that
8 decision within two weeks after the opinion is rendered.

9 MR. FABRICANT: That's fine, Your Honor.

10 THE COURT: Okay. Does that help you, Blair?

11 MR. JACOBS: Yes. Thank you, Your Honor.

12 THE COURT: All right. Now, I don't know how
13 this affects the rest of the schedule. My gut feeling is it
14 generally shouldn't because there are other things going on
15 in this case and I can't remember how far out we did your
16 schedule.

17 MR. JACOBS: Forty-five days we pushed
18 everything, and we're still negotiating where we pushed
19 everything.

20 THE COURT: I apologize, Blair. I didn't make
21 myself quite clear. I can't remember whether we included a
22 due date for claim construction, whether we included a due
23 date for motions for summary judgment in the scheduling
24 order we had before or whether we kind of left that open.

25 MR. JACOBS: Mr. Drucker might know better than

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1 I, but my understanding is that we did not with regard to
2 claim construction, we did have a date of summary judgment
3 but we're probably going to be adjusting those and pushing
4 those back in light of pushing back fact discovery.

5 Larry, is that right?

6 MR. DRUCKER: I don't remember specifically if
7 we had a date. I think we may have had claim construction
8 briefing in the schedule, Blair.

9 MR. JACOBS: We did, Larry. Absolutely.

10 THE COURT: But I don't know whether you had
11 summary judgment. I can't remember all the scheduling
12 orders I've entered in every one of the cases, and some of
13 the cases, I know that we've kind of stopped it at a certain
14 point and then come back and readdressed it. But I couldn't
15 remember if in this matter we actually had dates, cutoff
16 date for claim construction and/or summary judgment motions.
17 I ask that counsel address those and look at that, get a
18 scheduling order to me or at least an order for me to review
19 that you agree upon to address those issues in light of the
20 ruling that I made today.

21 MR. FABRICANT: Your Honor, this is
22 Mr. Fabricant. I know under Judge Jordan's original
23 scheduling order, the summary judgment briefs went along
24 simultaneously with claim construction.

25 THE COURT: Yes, and I'm generally keeping it

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1 that way. But I just didn't know if, when I got into the
2 picture, whether we modified Judge Jordan's scheduling order
3 and we made adjustments, recognizing I would not be deciding
4 that and we didn't have a District Court Judge assigned to
5 this case.

6 MR. FABRICANT: I think we just kept rolling the
7 dates back as they originally were constituted. But we're
8 more than happy to sit down with Mr. Jacobs and come up with
9 something that we can try to agree on as a reasonable
10 schedule.

11 THE COURT: Sure, that's fine. And I would ask,
12 I only ask that you do that so we've got goals that we're
13 working at. And if we need to adjust them, we can still
14 continue to do that. I just want to make sure all of us are
15 on the same page.

16 I will not be issuing an order today outlining
17 what was said during this conversation because I have
18 learned that when I do that, it doesn't always come out
19 exactly the way I wanted it to, but consider this, the
20 rulings and the conclusions that I addressed with you or
21 told you today to be rulings in this case on the discovery
22 issues that we talked about.

23 MR. JACOBS: That's fine, Your Honor. Thank
24 you.

25 THE COURT: Now, I'm sorry. I kept

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1 interrupting. Larry, were you trying to say something?

2 MR. FABRICANT: No, I think we covered it, Your
3 Honor.

4 THE COURT: I just wanted to make sure. I kept
5 hearing a voice in the background so I wanted to make sure.

6 Thank you, counsel. If I don't talk to you
7 before the holidays, have a safe and happy one.

8 MR. JACOBS: You do the same, Your Honor.

9 MR. FABRICANT: Thank you, Your Honor.

10 THE COURT: Take care now. Good-bye.

11 (Telephone conference ends at 10:17 a.m.)
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EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MCKESSON AUTOMATION, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-028 (SLR/LPS)
)	
SWISSLOG ITALIA S.P.A. and)	
TRANSLOGIC CORPORATION)	
)	
Defendants.)	

STIPULATED SEVENTH AMENDED SCHEDULING ORDER

At Wilmington this ___ day of ___ 2008, the parties having satisfied their obligations under Fed. R. Civ. P. 26(f), and the court having conducted a pretrial scheduling conference pursuant to Fed. R. Civ. P. 16 and D. Del. LR 16.2(a) and (b).

IT IS ORDERED THAT:

1. **Pre-Discovery Disclosures.** The parties have exchanged the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.2.

2. **Discovery.**

(a) Discovery has taken place on at least the following subjects: technology of each party, damages, market shares, sales practices, corporate structure,

(b) All fact discovery shall be commenced in time to be completed by January 31, 2008.¹

(1) Document production shall be completed on or before September 8, 2007

(2) Maximum of **27** interrogatories by each party to any other party.

(3) In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof no later than the date established for the completion of document production, with the responsive answers due within thirty (30) days thereof. The adequacy of all such interrogatory answers shall be judged by the level of detail each party provides; i.e., the more detail a party provides, the more detail a party shall receive.

(4) Maximum of **150** requests of admission by each party to any other party.

¹ Unless specifically agreed to otherwise by the parties, no depositions of additional witnesses, other than experts, Mr. Heilman, Mr. Demmler, Mr. Balsamo, Mr. Provvionato, Steven Weisburd, Alfred Fabricant and Ian Blum, shall be noticed after October 10, 2007 unless otherwise ordered by the Court. The parties recognize that willfulness discovery may need to continue beyond the January 31 deadline due to scheduling issues associated with Messrs. Provvionato's and Balsamo's depositions as well as this Court's December 3, 2007 Order.

Defendants also note that they have previously noticed a 30(b)(6) deposition of a McKesson witness on the willfulness issue, and believed that the prior Scheduling Orders in this case would permit Defendants to conduct such a deposition. McKesson disagrees. If necessary, Defendants will seek to depose a witness on the willfulness issue following the Court's ruling on Defendants' Motion to Dismiss McKesson's Willfulness Allegations. Notwithstanding, by making this stipulation, Defendants are not agreeing to permit any depositions relating to willfulness beyond those expressly permitted by the Court and/or those properly noticed prior to the Court's December 3, 2007 Order. Nothing in this Stipulation shall be construed as a concession by Defendants to permit the noticing of any additional depositions relating to willfulness. The parties are working to complete such discovery as expeditiously as possible. Plaintiff disagrees with Defendants contention that it is entitled to a willfulness deposition. McKesson has likewise previously noticed a Rule 30(b)(6) deposition of a witness from Defendants on Defendants' defenses and counterclaims, including the preexisting antitrust counterclaim. To the extent Defendants are entitled to a deposition on the willfulness issue, McKesson is likewise entitled to a deposition on Defendants' defenses and counterclaims. McKesson further reserves the right to notice a Rule 30(b)(6) deposition on any issue or claim added to this matter by Defendants' pending Motion for Leave to Amend Their Answers and Counterclaims. If necessary, Plaintiff will seek to depose a witness on these issues following the Court's ruling on Defendants' Motion to Amend.

(5) In the absence of agreement among the parties or by order of this court, no deposition (other than those noticed under Fed. R. Civ. P. 30(b)(6)) shall be scheduled prior to the completion of document production.

(6) Maximum of **70 hours** for fact depositions (excluding 30(b)(6) depositions, inventor's depositions and expert depositions)

(c) Expert discovery shall be commenced in time to be completed by **June 30, 2008**.

(1) Expert reports on issues for which the parties have the burden of proof due March 31, 2008. Rebuttal expert reports due **May 28, 2008**.

(2) Expert depositions to be limited to a maximum of **7 hours** per expert unless extended by agreement of the parties.

(3) All Daubert motions shall be filed on or before the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

(d) If willfulness has been asserted and absent agreement among the parties, the Defendants must inform Plaintiff as to whether it intends to rely on advice of counsel within by _____, ~~except that Defendants will have 20 calendar days from the issuing of an Order from the Court deciding Defendants' Motion to Dismiss Plaintiff's Willfulness Allegations to decide whether they will rely on opinions of counsel provided by attorneys of Dickstein Shapiro, LLP.~~ If the decision is to rely on such advice, the scope of discovery shall include the materials provided by Defendants to its counsel and whatever other materials related to the issues in dispute that Defendants had in its possession at the time the advice was sought.

~~(e) Supplementations under Rule 26(e) have been exchanged. McKesson seeks supplemental discovery on damages.~~

(f) **Discovery Disputes.**

(1) The court shall conduct an in-person discovery status conference on _____ from _____ m. to _____ m., the time to be allocated equally among the parties. **No motions to compel or motions for protective order shall be filed absent approval of the court.**

(2) The court shall remain available to resolve by telephone conference disputes that arise during the course of a deposition and disputes over the terms of a protective order.

(3) Absent express approval of the court following a discovery conference, no motions pursuant to Fed. R. Civ. P. 37 shall be filed.

(g) **Fact Witnesses to be Called at Trial.** Within one (1) month following the close of expert discovery, each party shall serve on the other parties a list of each fact witness (including any expert witness who is also expected to give fact testimony), who has previously been disclosed during discovery and that it intends to call at trial. Within one (1) month of receipt of such fact witness list, each party shall serve a list of each rebuttal fact witness that it intends to call at trial. The parties shall have the right to depose any such fact witnesses who have not previously been deposed in this case. Such deposition shall be held within one (1) month after service of the list of rebuttal fact witnesses and shall be limited to twenty (20) hours per side in the aggregate unless extended by agreement of the parties or upon order of the court upon good cause shown.

3. Joinder of other Parties and Amendment of Pleadings. All motions to join other parties and amend the pleadings shall be filed on or before **December 20, 2006**.

4. Settlement Conference. Pursuant to 28 U.S.C. § 636, this matter is referred to a Magistrate Judge for the purposes of exploring ADR.

5. Claim Construction Issue Identification. If the court does not find that an earlier claim construction would be helpful in resolving the case, the parties shall exchange lists of those claim terms that they believe need construction and their proposed claim construction of those terms **on March 19, 2008**. This document will not be filed with the court. Subsequent to exchanging such lists, the parties will meet and confer to prepare a Joint Claim Construction Statement to be submitted pursuant to paragraph 7 below.

6. Summary Judgment Motions. All summary judgment motions shall be served and filed with an opening brief on or before **September 10, 2008**. Opposition Briefs are due **October 3, 2008** and Reply Briefs are due **October 20, 2008**, unless otherwise agreed to by the parties and approved by the court.

7. Claim Construction. Lawyers must identify, during the claim construction phase of the case, any claim language that will have a meaning to a person of ordinary skill in the art that differs from the ordinary meaning. Any language not so identified will be construed according to its ordinary dictionary meaning.

The parties shall agree upon and file the Joint Claim Construction Statement on **May 30, 2008**, with the claim chart separately docketed. The parties will file simultaneous opening claim construction briefs on **July 10, 2008**. Simultaneous response briefs should be filed by **August 11, 2008**. Issues of claim construction shall be considered by the court in conjunction with the summary judgment motion(s). The hearing on the claim construction and motion(s) for summary judgment will be heard on _____ at _____ m.

8. Applications by Motion. Any application to the court shall be by written motion filed with the clerk. **The court will not consider applications and requests submitted by letter or in a form other than a motion**, absent express approval by the court.

(a) **Any non-dispositive motion should contain the statement required by D. Del. LR 7.1.1.**

(b) No telephone calls shall be made to chambers.

(c) Any party with an **emergency** matter requiring the assistance of the court shall e-mail chambers utilizing the "E-mail Request for Emergency Relief" and "Opposing Counsel's Response" forms posted on Chief Judge Robinson's website and e-mail the completed forms to slr_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency. NO ATTACHMENTS shall be submitted in connection with said e-mail.

9. Motions in Limine. No motions in limine shall be filed; instead the parties shall be prepared to address their evidentiary issues at the pretrial conference and during trial (before and after the trial day).

10. Pretrial Conference. A pretrial conference will be held on _____ at _____ m. in courtroom 6B, sixth floor Federal Building, 844 King Street, Wilmington, Delaware. The Federal Rules of Civil Procedure and D. Del. LR 16.4 shall govern the pretrial conference.

11. Trial. This matter is scheduled for a [day/week] bench/jury trial commencing on _____ in courtroom 6B, sixth floor Federal Building, 844 King Street, Wilmington, Delaware. For purposes of completing pretrial preparations, the parties should plan on being allocated a total number of hours in which to present their respective cases.

Agreed to by the parties this ____ day of April, 2008

BLANK ROME LLP

MORRIS, NICHOLS ARSHT & TUNNELL LLP

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*Counsel for Plaintiff McKesson Automation,
Inc.*

*Counsel for Defendants Swisslog Italia S.p.A.
and Translogic Corporation*

SO ORDERED this ____ day of _____, 2008.

United States District Judge

EXHIBIT H

DeMatteo, Bryan

From: May, Christopher [Christopher.May@sablaw.com]
Sent: Thursday, April 17, 2008 1:28 PM
To: Heaney, Julie; DeMatteo, Bryan
Cc: Dube, Dale R.; Jacobs, Blair; Ondrick, Christina; May, Christopher
Subject: RE: McKesson/Swisslog - scheduling order

We can agree to that so long as Swisslog acknowledges that removal of the footnote isn't dropping the issues raised there, just that we don't see a need for those issues to be in the scheduling order.

From: Heaney, Julie [mailto:JHeaney@MNAT.com]
Sent: Thursday, April 17, 2008 1:13 PM
To: 'DeMatteo, Bryan'; May, Christopher
Cc: 'Dube, Dale R.'
Subject: McKesson/Swisslog - scheduling order

Bryan and Chris,
Attached is the scheduling order including the dates that Judge Robinson gave us. Footnote 1 is still in there -- she didn't say anything about it at the conference, but it is not something she would include in her typical scheduling order and I think she may balk at signing off on it. Do you think it can be removed, since it was included in the stipulation filed yesterday and has gotten into the record that way?
Julie

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